IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 81020-6
	)	
v.	)	
	)	EN BANC
MARK PATRICK KILGORE,	)	
	)	
Petitioner.	)	Filed September 24, 2009
_____	)	

FAIRHURST, J. — A jury convicted Mark Patrick Kilgore of three counts of rape of a child and four counts of child molestation. The trial court imposed an exceptional sentence of 560 months for each count to be served concurrently. Two counts were reversed on appeal and the remaining five counts affirmed. The case was remanded for retrial, but the State elected not to retry the two reversed counts. After the mandate was issued terminating direct review of Kilgore's case, but before the trial court corrected Kilgore's judgment and sentence to reflect the reversed counts, the United States Supreme Court issued *Blakely v. Washington*, 542 U.S.

296, 124 S. Ct. 2531, 195 L. Ed. 2d 403 (2004).

Kilgore argues that his case was not final for purposes of retroactivity when *Blakely* was decided and that the trial court erred when on remand it refused to resentence Kilgore in accordance with the requirements of *Blakely*. Kilgore also argues the Court of Appeals erred when it granted the State's motion to dismiss for failure to raise an appealable issue.

We hold the Court of Appeals did not err when it dismissed Kilgore's appeal because no appealable issues remained. As Kilgore had exhausted the availability of direct review prior to the United States Supreme Court's decision in *Blakely*, his case was necessarily final when the trial court declined to resentence him on remand.

I. FACTUAL AND PROCEDURAL HISTORY

The State charged Kilgore with four counts of child molestation in the first degree and three counts of rape of a child in the first degree. The State alleged in counts one and two that on multiple occasions Kilgore molested and raped C.M., Kilgore's stepniece. Counts three through seven charged Kilgore with molesting and raping his stepdaughter, A.B., and two brothers-in-law on multiple occasions. On October 1, 1998, a jury found Kilgore guilty of all seven counts.

The trial court sentenced Kilgore on December 1, 1998. Kilgore's offender

score was 18. The standard sentencing range for child molestation in the first degree was 149-198 months, and for child rape in the first degree, 210-280 months. Former RCW 9.94A.310, .320 (1995). The trial court imposed an exceptional sentence of 560 months for each count to run concurrently. The trial court found the following aggravating factors: (1) violation of a position of trust, (2) vulnerable victims, (3) multiple victims and multiple incidents per victim, (4) lack of remorse or acceptance of responsibility, and (5) deliberate cruelty.

Kilgore appealed but did not challenge his exceptional sentence. The Court of Appeals reversed counts one and two, affirmed the remaining five counts, and remanded "for further proceedings," which could include retrial of counts one and two. *State v. Kilgore*, 107 Wn. App. 160, 190, 26 P.3d 308 (2001) (*Kilgore* I).[1] We affirmed the Court of Appeals. *State v. Kilgore*, 147 Wn.2d 288, 295, 53 P.3d 974 (2002). Our decision became final on October 7, 2002. We mandated the case to the superior court for further proceedings in accordance with our opinion and for the assessment of costs. The time for Kilgore to file a petition for certiorari expired 90 days later on January 5, 2003.

On remand, the State declined to retry Kilgore on counts one and two. At a

[1]The *Kilgore* I court gave guidance to the trial court in case the State elected not to offer physical evidence of counts one and two on retrial.

hearing before the trial court on October 7, 2005,[2] Kilgore argued the trial court must resentence him in accordance with *Blakely*. The trial court denied Kilgore's motion for resentencing, ruling: (1) Kilgore's case was final on October 7, 2002; (2) Kilgore was entitled to an order correcting his judgment and sentence; (3) Kilgore was not entitled to a new sentencing hearing; and (4) "[a]ll other terms and conditions of the original Judgment and Sentence shall remain in full force and effect as if set forth in full herein." Clerk's Papers per Request of Appellant at 100-01. The trial court then signed a motion and order correcting the judgment and sentence, striking counts one and two from Kilgore's judgment and sentence, and correcting his offender score.

In a divided opinion,[3] the Court of Appeals held, because the trial court was not required to address Kilgore's remaining convictions on remand and did not, Kilgore's judgment and sentence was final when this court issued its mandate on October 7, 2002. *State v. Kilgore*, 141 Wn. App. 817, 826-27, 172 P.3d 373 (2007) (*Kilgore* III). The Court of Appeals also granted the State's motion to dismiss, holding the Court of Appeals was bound by *State v. Barberio*, 121 Wn.2d 48, 846 P.2d 519 (1993). The Court of Appeals held it could not review Kilgore's sentence

[2]The record does not indicate why resentencing did not occur earlier or when the State elected not to retry counts one and two.

[3]Judge J. Robin Hunt wrote for the majority, Judge Joel M. Penoyar concurred in result only, and Judge David H. Armstrong filed a dissent.

because the trial court did not revisit this issue on remand. *Kilgore* III, 141 Wn. App. at 828 (citing *Barberio*, 121 Wn.2d at 50).

Kilgore petitioned this court for review, arguing the Court of Appeals erred in determining his judgment became final before the trial court acted on remand and in concluding *Barberio* barred review where there has been an intervening change in law, making his original sentence unconstitutional. We granted Kilgore's petition for review. *State v. Kilgore*, 164 Wn.2d 1001, 190 P.3d 55 (2008).

II. ISSUE

> Whether direct review was available to allow application of *Blakely* to invalidate Kilgore's exceptional sentence, despite the trial court's refusal to exercise its discretion on remand.

III. ANALYSIS

Kilgore argues his sentence is in violation of *Blakely* and must be reversed. *Blakely* applies only to cases pending on direct review or not yet final. *State v. Evans*, 154 Wn.2d 438, 444, 114 P.3d 627 (2005) (quoting *In re Pers. Restraint of St. Pierre*, 118 Wn.2d 321, 326, 823 P.2d 492 (1992) (citing *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987) and *Teague v. Lane*, 489 U.S. 288, 311, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989) (O'Connor, J., opinion))). Therefore, "[t]he critical issue in applying the current retroactivity analysis is whether the case was final when the new rule was announced." *St.*

Pierre, 118 Wn.2d at 327. We define finality for purposes of retroactive application of a new rule of law as the point at which "'a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.'" *Id.* (quoting *Griffith*, 479 U.S. at 321 n.6 (citing *United States v. Johnson*, 457 U.S. 537, 542 n.8, 102 S. Ct. 2579, 73 L. Ed. 2d 202 (1982))).

Kilgore invites this court to adopt tests created by federal courts of appeal to determine finality where cases have been remanded following the reversal of some, but not all, counts.[4] Although we generally follow federal retroactivity analysis, *Evans*, 154 Wn.2d at 444, it is state law, particularly our rules of appellate procedure, that determines whether a petitioner has exhausted his right to appeal in state court. "A state conviction and sentence become final for purposes of retroactivity analysis when the availability of direct appeal *to the state courts* has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied." *Caspari v. Bohlen*, 510 U.S. 383,

[4]Kilgore argues we should adopt the United States Court of Appeals for the Ninth Circuit's rule for determining finality for purposes of collateral review set forth in *United States v. Colvin*, 204 F.3d 1221 (9th Cir. 2000), and *United States v. LaFromboise*, 427 F.3d 680 (9th Cir. 2005), or alternatively, the Second Circuit's approach to finality for purposes of retroactivity in *Burrell v. United States*, 467 F.3d 160 (2d Cir. 2006). Because we are determining whether Kilgore has exhausted his right to review in *state* court and interpreting finality under our common law and the RAPs, these cases are inapplicable.

390, 114 S. Ct. 948, 127 L. Ed. 2d 236 (1994) (emphasis added). Whether a defendant has exhausted his right to direct review in state court dictates in part whether his case is final for purposes of retroactivity. *State v. Hanson*, 151 Wn.2d 783, 790, 91 P.3d 888 (2004). Although Kilgore attempts to separate the two,[5] finality and reviewability are intrinsically bound.

"Finality for purposes of retroactivity analysis is determined by the case as a whole, not individual issues." *St. Pierre*, 118 Wn.2d at 330. Nevertheless, "the finality of that portion of the judgment and sentence that was correct and valid at the time it was pronounced" is unaffected by the reversal of one or more counts. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 34, 604 P.2d 1293 (1980) (citing *McNutt v. Delmore*, 47 Wn.2d 563, 565, 288 P.2d 848 (1955), *overruled in part on other grounds by State v. Sampson*, 82 Wn.2d 663, 513 P.2d 60 (1973)). Therefore, a case has no remaining appealable issues where an appellate court issues a mandate reversing one or more counts and affirming the remaining count, and where the trial

[5]Kilgore attempts to separate finality from reviewability by relying on case law determining finality for purposes of the timeliness of a personal restraint or habeas petition. *See, e.g.*, *infra* n.4. He relies heavily on *In re Personal Restraint of Skylstad*, 160 Wn.2d 944, 946, 162 P.3d 413 (2007), where we held a judgment of conviction could not be final for purposes of collateral review while a defendant's sentence was under direct review. *Skylstad* is distinguishable. Contrary to the dissent's claim otherwise, we did not address finality for purposes of retroactivity in *Skylstad*. Moreover, unlike Kilgore, Skylstad's sentence was reversed on appeal and his case remanded for resentencing. *Id.* Until the trial court exercised its independent judgment by imposing a new judgment and sentence, Skylstad had no sentence, effectively vacating the judgment. *Id.* at 954. In Kilgore's case, his judgment and sentence continued to be valid as to the five affirmed counts.

court exercises no discretion on remand as to the remaining final counts. *Barberio*, 121 Wn.2d at 51. "Only if the trial court, on remand, exercised its independent judgment, reviewed and ruled again on such issue does it become an appealable question." *Id.* at 50. In order to determine whether Kilgore's case was final for purposes of retroactivity when *Blakely* was decided, we must first determine whether any appealable issues remained when the trial court corrected Kilgore's judgment and sentence.

"RAP 12.7[6] defines the finality of a decision by an appellate court. Once an appellate decision is final, review as a matter of right is exhausted." *Hanson*, 151

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[6]Finality of Decision

(a) Court of Appeals. The Court of Appeals loses the power to change or modify its decision (1) upon issuance of a mandate in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9, (2) upon acceptance by the Supreme Court of review of the decision of the Court of Appeals, or (3) upon issuance of a certificate of finality as provided in rule 12.5(e) and rule 16.15(e).

(b) Supreme Court. The Supreme Court loses the power to change or modify a decision of the Court of Appeals upon issuance of the mandate of the Court of Appeals in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9. The Supreme Court loses the power to change or modify a Supreme Court decision upon issuance of the mandate of the Supreme Court in accordance with rule 12.5, except when the mandate is recalled as provided in rule 12.9.

(c) Special Rule for Costs and Attorney Fees and Expenses. The appellate court retains the power after the issuance of the mandate to act on questions of costs as provided in Title 14 and on questions of attorney fees and expenses as provided in rule 18.1

(d) Special Rule for Law of the Case. The appellate court retains the power to change a decision as provided in rule 2.5(c)(2).

RAP 12.7 (boldface type omitted).

Wn.2d at 790 (footnote omitted). Finality is the point at which the appellate court loses the power to change its decision. RAP 12.7 (a), (b). This occurs when the appellate court issues its mandate, when this court accepts review, or when the Court of Appeals issues a certificate of finality. *Id.* The pendency of a case otherwise final under RAP 12.7 can be revived pursuant to RAP 2.5(c).[7] RAP 12.7(d).

We have interpreted RAP 2.5(c)(1) to allow trial courts, as well as appellate courts, discretion to revisit an issue on remand that was not the subject of the earlier appeal.[8] *Barberio*, 121 Wn.2d at 51. This is consistent with RAP 12.2,[9] which

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[7]Law of the Case Doctrine Restricted. The following provisions apply if the same case is again before the appellate court following a remand:

> (1) *Prior Trial Court Action*. If a trial court decision is otherwise properly before the appellate court, the appellate court may at the instance of a party review and determine the propriety of a decision of the trial court even though a similar decision was not disputed in an earlier review of the same case.
>
> (2) *Prior Appellate Court Decision.* The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

RAP 2.5(c) (boldface type omitted).

[8]By contrast we have held, "[t]he plain language of RAP 2.5(c)(2) indicates that only an *appellate* court can revisit an earlier appellate decision in the same case." *State v. Schwab*, 163 Wn.2d 664, 676, 185 P.3d 1151 (2008).

[9]DISPOSITION ON REVIEW

> The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require. Upon issuance of the mandate of the appellate court as provided in 12.5, the action taken or decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court, unless otherwise directed upon recall of the mandate as provided in rule 12.9, and except as provided in rule 2.5(c)(2). After the mandate has issued, the trial court may, however, hear and decide

allows trial courts to entertain postjudgment motions authorized by statute or court rules, as long as the motions do not challenge issues already decided on appeal. If the trial court elects to exercise this discretion, its decision may be the subject of a later appeal, thereby restoring the pendency of the case.[10] *Id.* at 50 (citing 2 Lewis Orland & Karl Tegland, Washington Practice: Rules of Practice 481 (4th ed. 1991)); *accord* RAP 2.2(9), (10), (13) (providing right to appeal from postjudgment orders).[11]

In *Barberio*, we considered whether direct review was available where the trial court elected *not* to exercise its discretion on remand. 121 Wn.2d 48. Barberio was convicted of one count of second degree rape and one count of third degree

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> postjudgment motions otherwise authorized by statute or court rule so long as those motions do not challenge issues already decided by the appellate court.

RAP 12.2 (boldface type omitted).

[10]The United States Supreme Court recognized the ability of state courts to restore the pendency of a case in *Jimenez v. Quarterman*, __ U.S. __, 129 S. Ct. 681, 172 L. Ed. 2d 475 (2009). The Texas Court of Criminal Appeals had granted Jimenez an out-of-time appeal. *Id.* at 683-84. In his petition for a writ of habeas corpus, Jimenez argued his conviction became final on the date time expired for seeking certiorari review of the decision in his out-of-time appeal. *Id.* at 684. The Court agreed, reasoning once the Texas Court of Criminal Appeals granted the out-of-time appeal, Jimenez's case was no longer final for purposes of collateral review. *Id.* at 686.

[11]Contrary to the dissent's claim, we are mindful of RCW 9.94A.585 and RAP 2.2(a) and 5.2. RCW 9.94A.585, which allows defendants to appeal sentences outside the standard range, would be applicable if the trial court on remand had entered a new judgment and sentence that sentenced Kilgore outside the standard range. As the trial court on remand corrected only the original judgment and sentence, Kilgore had his opportunity to appeal his sentence on his direct appeal but chose not to do so. As for RAP 2.2(a) and 5.2, our reasoning and holding is not inconsistent with either of these rules. Under RAP 2.2(a), Kilgore's original judgment and sentence was appealable, and he appealed it successfully. Under RAP 5.2, his direct appeal was also timely.

rape. *Id.* at 49. The trial court imposed an exceptional sentence, which Barberio did not challenge on appeal. *Id.* The Court of Appeals reversed the third degree rape conviction and affirmed the second degree rape conviction. *Id.* The State chose not to retry the reversed charge. *Id.* At a resentencing hearing, Barberio challenged the aggravating factors found by the court in the initial sentencing and argued his lower sentencing range required the trial court to proportionally reduce his exceptional sentence. *Id.* at 49-50. The trial court resentenced Barberio to the same exceptional sentence, despite his reduced offender score and reduced range. *Id.*; *State v. Barberio*, 66 Wn. App. 902, 905, 833 P.2d 459 (1992). The trial court emphasized nothing had changed in regard to new evidence or the impact of the Court of Appeals opinion that merited reexamination of Barberio's sentence. *Barberio*, 121 Wn.2d at 51-52. We concluded in resentencing Barberio to the same exceptional sentence that the trial court made "only corrective changes in the amended judgment and sentence." *Id.* at 51.

We held there was no issue to review on appeal because the trial court did not exercise its independent judgment on remand. *Id.* at 51; *see also State v. Traicoff*, 93 Wn. App. 248, 257-58, 967 P.2d 1277 (1998) (defendant barred from challenging conditions of community placement for first time in second appeal where trial court on remand corrected terms without revisiting placement

conditions); *State v. Mahone*, 98 Wn. App. 342, 346, 989 P.2d 583 (1999) (holding amendment of judgment and sentence was not appealable where trial court made appellate court's award of costs part of the judgment and sentence and exercised no discretion). The trial court's actions in *Barberio* gave rise to no new appealable issues; therefore, Barberio had exhausted his right to appeal in state court when we denied review of the first Court of Appeals decision. *State v. Barberio*, 115 Wn.2d 1010, 797 P.2d 511 (1990). *Barberio* thus makes clear that when, on remand, a trial court has the choice to review and resentence a defendant under a new judgment and sentence or to simply correct and amend the original judgment and sentence, that choice itself is not an exercise of independent judgment by the trial court.[12] The reason that choice is not an independent judgment is because if the trial court simply corrects the original judgment and sentence, it is the original judgment and sentence entered by the original trial court that controls the defendant's conviction and term of incarceration.

When we compare the facts of this case to those of *Barberio*, it becomes more apparent that, like in *Barberio*, the trial court on remand did not exercise its

[12]The dissent appears to confuse the terms "independent judgment on remand" with an "action" by the trial court and uses those terms interchangeably. Dissent at 1, 5, 6, 8. As discussed, an "independent judgment on remand" has specific meaning. Under the dissent's reasoning, however, an "action" by the trial court could include anything, up to and including any type of change, even clerical, to the judgment and sentence.

independent judgment. Two of Kilgore's convictions were reversed, while five were affirmed. Kilgore did not challenge his sentencing on appeal. His case was remanded for "further proceedings," with the possibility that the State would retry Kilgore's reversed counts. As in *Barberio*, the State did not retry the reversed convictions. 121 Wn.2d at 49. Although the trial court had discretion under RAP 2.5(c)(1) to revisit Kilgore's exceptional sentence on the remaining five convictions, it made clear that in correcting the judgment and sentence to reflect the reversed counts, it was not reconsidering the exceptional sentence imposed on each of the remaining counts. Therefore, unless the trial court erred or abused its discretion in declining to resentence Kilgore on remand and simply correcting the original judgment and sentence, no appealable issues remained, and Kilgore's case continued to be final for purposes of retroactivity when the time to petition for certiorari elapsed 90 days following the issuance of our mandate. *Barberio*, 121 Wn.2d at 50.

Before the Court of Appeals, Kilgore argued his reduced offender score required the trial court to resentence him despite the fact that his sentencing range was unaffected.[13] """[W]hen a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous

[13]Kilgore did not include this argument in his briefing to this court. We include it only to complete our analysis.

sentence."'" *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 869, 50 P.3d 618 (2002) (quoting *Carle*, 93 Wn.2d at 33 (quoting *McNutt*, 47 Wn.2d at 565)). Where an error in a defendant's offender score affects the applicable sentencing range, resentencing is required. *Id.* Resentencing is also required where the sentencing range is unaffected "if the trial court had indicated its intent to sentence at the low end of the range, and the low end of the correct range is lower than the low end of the range determined by using the incorrect offender score." *Id.* at 868. Although Kilgore's offender score was reduced from 18 to 12, his presumptive sentencing range remained the same.[14] The trial court indicated no intention to sentence Kilgore at the low end of the sentencing range. As the Court of Appeals noted, there was no sentencing error on remand to correct. *Kilgore* III, 141 Wn. App. at 825 n.8.

We held in *Barberio*, that a trial court has discretion on remand pursuant to RAP 2.5(c)(1) to revisit issues that were not the subject of an earlier appeal. 121 Wn.2d at 51. The trial court's discretion to resentence on remand is limited by the scope of the appellate court's mandate. *State v. Collicott*, 118 Wn.2d 649, 660, 827 P.2d 263 (1992). The mandate in *Kilgore* I did not explicitly authorize the trial court to resentence Kilgore. *Kilgore* I, 107 Wn. App. at 190. The Court of Appeals

[14]We note that in *Barberio*, the defendant's sentencing range was affected by the reduced offender score. 121 Wn.2d at 49.

characterized its mandate as "'open-ended,'" and concluded "in theory, the trial court could have considered resentencing Kilgore for the affirmed convictions on remand."[15] *Kilgore* III, 141 Wn. App. at 826.

We agree with the Court of Appeals that the trial court did not abuse its discretion when it declined to resentence Kilgore on remand. *Id.* at 827. Although the number of victims, and incidents per victim, was reduced by the reversal of the counts as to C.M., there remained three victims and the multiple incidents related to these victims. This, as well as the four remaining aggravating factors--violation of a position of trust, vulnerable victims, lack of remorse or acceptance of responsibility, and deliberate cruelty--continued to support the exceptional sentence originally imposed by the trial court. Moreover, the trial court initially imposed the 560 month exceptional sentence as to each individual conviction. We cannot find the trial court abused its discretion by refusing to resentence Kilgore under such circumstances.[16]

Lastly, Kilgore argues *Barberio* is inapplicable where there has been an

[15]We note Kilgore agreed the trial court had discretion to change his sentence to reflect the reversed convictions in his briefing to this court.

[16]Under the dissent's reasoning, Kilgore would be allowed two bites at the same apple. The dissent would allow Kilgore to again appeal his convictions and sentence for molesting his stepdaughter and two brothers-in-law even though the Court of Appeals and this court both affirmed his convictions and sentence for those counts. We believe, as long as the presumptive range and sentence did not change for those counts, that it was permissible for the trial court on remand to keep Kilgore's judgment and sentence final.

intervening change in law. In essence, he asks us to waive our rules of appellate procedure to allow application of a new rule of law to defendants who have otherwise exhausted their right to appeal as long as there is a *possibility* of a change to their judgment and sentence.[17] Finality occurs, however, when the "'*availability* of appeal'" had been exhausted. *St. Pierre*, 118 Wn.2d at 327 (emphasis added) (quoting *Griffith*, 479 U.S. at 321 n.6 (citing *Johnson*, 457 U.S. at 542 n.8)). The fact that the trial court had discretion to reexamine Kilgore's sentence on remand is not sufficient to revive his right to appeal. Our rules of appellate procedure require that the trial court exercise its discretion in order to give rise to an appealable issue. We will not waive this rule to make exceptions for defendants where a mere possibility of direct review exists.

IV. CONCLUSION

We define finality for purposes of retroactive application of a new rule of law as the point at which "'a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.'" *Id.* (quoting *Griffith*, 479 U.S. at 321 n.6 (citing *Johnson*, 457 U.S. at 542 n.8)). Here, the trial court entered its judgment and

[17]The dissent makes a similar argument that, as long as the trial court could take some sort of action, the judgment and sentence did not become final until any action was taken. Dissent at 1. Unlike Kilgore, who argues that *Barberio* is inapplicable, the dissent essentially reads *Barberio* into a nullity.

sentence on December 1, 1998; this court issued its mandate terminating Kilgore's right to appeal in state court on October 7, 2002; and on January 5, 2003, the time for filing a petition for certiorari in Kilgore's case expired. These events occurred prior to the Supreme Court's decision in *Blakely*. Because the trial court on remand chose not to exercise its discretion under RAP 2.5(c)(2), Kilgore's case remained final as to his right to appeal in state court as of October 7, 2002. RAP 12.5(c), 12.7 (b). We therefore hold the trial court did not err when it declined to apply *Blakely* to invalidate Kilgore's exceptional sentence and affirm the Court of Appeals dismissal of Kilgore's appeal.

AUTHOR:
Justice Mary E. Fairhurst

WE CONCUR:
Chief Justice Gerry L. Alexander
Justice Susan Owens
Justice Charles W. Johnson
Justice James M. Johnson
Justice Debra L. Stephens
Justice Tom Chambers